



# COUNTY OF LOS ANGELES

## OFFICE OF THE COUNTY COUNSEL

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RAYMOND G. FORTNER, JR.  
County Counsel

June 23, 2006

TO: SUPERVISOR MICHAEL D. ANTONOVICH, Mayor  
SUPERVISOR GLORIA MOLINA  
SUPERVISOR YVONNE B. BURKE  
SUPERVISOR ZEV YAROSLAVSKY  
SUPERVISOR DON KNABE

FROM: RAYMOND G. FORTNER, JR.  
County Counsel

RE: **Litigation Cost Manager's Annual Report on Cost Reduction  
Measures for 2006-07 (Monday, June 26, 2006, Budget  
Deliberations)**

Enclosed is the report by the County Counsel Litigation Cost Manager in response to your Board's order for an annual report regarding legal cost savings measures.

In his report, the Litigation Cost Manager discusses several measures to continue our management of litigation and achieve reductions in indemnity payments and legal fees and costs. As explained in his report, some measurements will begin to provide reliable identifiable results only after the data is captured for three full fiscal years.

The Office of the County Counsel remains committed to assisting in the timely and accurate assembling of all relevant data so that the measures described in this report will be reliable and meaningful, all in furtherance of the goal of reducing litigation costs to the County.

If you have questions concerning this matter, please contact me, Chief Deputy County Counsel Donovan M. Main at (213) 974-1804, or Litigation Cost Manager Robert E. Nagle at (213) 974-1822.

RGF:jb

Enclosure

c: David E. Janssen, Chief Administrative Officer

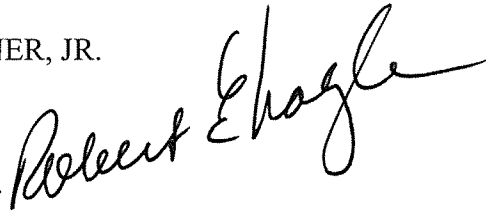
Sachi A. Hamai, Executive Officer, Board of Supervisors

EXEC.4025.1

# MEMORANDUM

June 23, 2006

TO: RAYMOND G. FORTNER, JR.  
County Counsel

FROM: ROBERT E. NAGLE   
Litigation Cost Manager

RE: **Litigation Cost Manager's Annual Report**

This memorandum is to respond to the Board of Supervisors' request for measures implemented by the Litigation Cost Manager and County Counsel for fiscal year 2006/2007 to continue to reduce the costs of litigation for the County. Under separate cover and subject to the attorney-client and attorney work product privilege, I have provided to the Board a detailed report of litigation results obtained for the Third Quarter of FY 2005/2006.

## **I. LITIGATION RESULTS FY 2005-2006**

Litigation results for the first three quarters of FY 2005-2006 are generally tracking last year's results, although with a slight increase in the amount paid out in judgments and settlements. For the first three quarters of FY 2005-2006 the County has paid \$27,229,962 (see attached Exhibit A). An additional \$5,639,869 has been paid out so far in the fourth quarter of FY 2005-2006 (which will not be over until June 30, 2006, with payment of billings continuing through July 30, 2006). Total judgments and settlements paid so far for FY 2005-2006 total \$32,869,831. Outside fees and costs paid out through the first three quarters of FY 2005-2006 are \$25,301,584.

The results through three quarters of FY 2005-2006 generally communicate the following concepts:

- (1) County Counsel obtains more dismissals of lawsuits than it settles;
- (2) County Counsel is generally successful when taking cases to trial;
- (3) County Counsel is generally successful when taking cases up on appeal;
- (4) County Counsel is generally successful in representing the Departments before Civil Service Hearings;

- (5) County Counsel has made great improvements in holding down outside legal fees and costs;
- (6) County Counsel generally has held down settlements when viewed over the past five years; and
- (7) County Counsel has been effective in generating revenue through litigation for the County.

## II. SIMPLE ANALYSIS OF LIMITED DATA

Sufficient data does not yet exist to complete an analysis of results by an individual attorney or law firm. However, I believe it is important to give the Board an indication of what will be possible once sufficient data has been collected. I have analyzed a summary of trials involving County-involved vehicle accidents and excessive force cases involving the Sheriff's Department.

In the last three years the County has gone to trial on nine cases involving County involved vehicle accidents. In almost all the cases, the ultimate verdict at trial was far less than plaintiff's demands. The **average fees** paid to attorneys for these nine cases was \$13,907; the **average costs** incurred from experts, depositions, etc., was \$7,453; the **average amount paid** on these cases was \$69,000, and each case **averaged** 25 months from receipt of the lawsuit until verdict at trial.

The County has gone to trial on 14 excessive force cases involving the Sheriff's Department, with 11 cases involving defense verdicts, and three adverse verdicts of \$37,500, \$301,500 and a \$3.2 million verdict that are being appealed. The **average fees** paid to attorneys in these fourteen cases was \$119,007; the **average costs** incurred from experts, depositions, etc., were \$45,299 and each case **averaged** 33 months from receipt of the lawsuit until verdict at trial. Calculating the average indemnity (verdict) paid on this type of case does not have much meaning. Allegations of civil rights abuse vary significantly from case to case and is dependent upon whether a deputy sheriff has been disciplined or who the plaintiff's attorney is. A few plaintiff's counsel expend large sums of fees working up the case hoping for a large award of attorney's fees in the event of a minimal award in favor of the plaintiff.

The value of calculating averages in these categories is to provide a base-line tool to evaluate the general performance of outside counsel and the efficiency and cost-effectiveness of how they manage their cases. The more an

individual case exceeds these “**average**” costs the more attention the monitoring attorney should pay to monitor the case. In the event that all of these same type cases for an individual law firm routinely exceed these “average” costs, the monitoring attorney can meet with the firm and discuss areas where cost control measures might be productive (reduce the number of depositions, not summarize depositions until sure the case is going to trial, etc.).

### **III. IMPLEMENTATION OF MARCH 23, 2006 LITIGATION MANAGEMENT PROCEDURES**

On March 23, 2006, Litigation Management policies and procedures were distributed to the Management Team of County Counsel that incorporated many of the revisions that had been created by the Litigation Cost Manager over the past two years that had led to the noticeable improvement in litigation results (attached hereto as Exhibit B). There has been demonstrable improvement in the scheduling of roundtables and the reporting of litigation results.

I believe the Office of the County Counsel is bringing closure on the first year of the training process and implementation of the revised litigation management policies and procedures and that so long as emphasis remains on these procedures and policies, the office will be able to continue to achieve significant improvement in litigation results.

### **IV. CLAIMS HANDLING**

County Counsel has been handling the government claims process in close association with Department Risk Manager Coordinators and advising the CAO Risk Manager of receipt of new claims for at least the past three years. We are currently evaluating what entity (Department, Contract City, Insurer) should be assigned as the primary funding source for the expenses of litigation.

### **V. ROUNDTABLES**

The County has obtained success in taking cases to trial through increased utilization of the "Roundtable" process. Successful outcomes will always be driven by an accurate assessment of the facts. The roundtable process is an essential element, which brings together through the direction of the Office of County Counsel, those individuals in the Department most familiar with the facts of the case, outside counsel, County Counsel and risk management in order to fully discover and analyze any adverse facts related to the litigation. The determination to settle a case or take it to trial can only be made once most of the

critical facts have been uncovered and analyzed by County Counsel. The earlier a case is roundtabled, the earlier County Counsel can take advantage and assure of being ahead of the curve to make an objective determination and assessment of the case value and economically dispose of the case or determine that the case should be tried.

The more cases taken to trial by County Counsel with positive results (a defense verdict, dismissal prior to verdict or a judgment against the County less than the amount authorized for settlement) will have a significant and beneficial effect on the ultimate value of cases settled by the County. The Office of County Counsel is committed to the roundtable process and for FY 2005/2006 has expanded the roundtable process to all divisions within County Counsel, and to move toward scheduling earlier roundtables for cases involving attorney fees and costs anticipated to be in excess of \$100,000.

The County's legal data base was transferred into the RMIS system effective March 1, 2003. The converted data into the system is being reviewed and cleaned up for all cases that were open as of March 1, 2003. I have issued regular quarterly reports to the Board of Supervisors since December 2003 detailing the results of the efforts of the Office of County Counsel in litigation management, with significant reductions in fees and costs paid to Outside Counsel, reduction in amounts paid out in Judgments and Settlements and the documentation of significant recoveries for the County as a result of the efforts of County Counsel through litigation.

All of my efforts and those of County Counsel will be dedicated during FY2006/2007 to continue the reduction of both Judgments and Settlements to be paid out by the County, the reduction of legal fees and expenses incurred by the County and the maximization of recoveries on behalf of the County.

If you need further clarification regarding any item contained in this memorandum, please contact me. The litigation management techniques described above have proven to be very effective in the reduction of litigation costs in my prior years in private industry.

If you have questions concerning this matter, please contact me, Litigation Cost Manager Robert E. Nagle, at (213) 974-1822.

REN

# EXHIBIT A

CONFIDENTIAL: ATTORNEY-CLIENT ATTORNEY WORK PRODUCT PRIVILEGED

EXHIBIT B

LEGAL FEES, COSTS, SETTLEMENTS, JUDGMENTS AND RECOVERIES PAID ON LITIGATED CASES\*\*  
FY 2000 - 2006

CONTRACT LAW FIRMS	2000 - 2001 <sup>1</sup>	2001 - 2002 <sup>1</sup>	2002 - 2003 <sup>1</sup>	2003 - 2004	2004 - 2005	2005-2006 (Through Three Quarters)	2005-2006 (Through Four Quarters)
Fees & Costs (RMIS) through 2003-2004; Fees only 2004-2006	\$42,213,781	\$44,815,630	\$51,086,941	\$37,800,450	\$32,373,114	\$22,173,859	
Costs					\$4,827,254	\$3,127,725	
Audited Fees & Costs from County Counsel & TPA Records	\$45,370,412	\$46,071,996					
TOTAL FEES & COSTS CONTRACT LAW FIRMS	\$45,370,412	\$46,071,996	\$51,086,941	\$37,800,450	\$37,200,368	\$25,301,584	
IN-HOUSE FEES				\$9,389,377	\$8,914,448		
IN-HOUSE COSTS					\$1,685,651		
TOTAL FEES & COSTS IN-HOUSE				\$9,389,377	\$10,600,099		
JUDGMENTS, SETTLEMENTS & RECOVERIES						2005-2006 (Through Three Quarters)	2005-2006 (Through Four Quarters)
Judgments & Settlements (RMIS)	\$58,343,405	\$62,723,319	\$57,442,032	\$26,326,925	\$27,102,278	\$27,229,962	\$32,869,831 (incomplete)
Audited Judgments and Settlements from County Counsel & TPA Records	\$58,767,817	\$59,928,019					
RECOVERIES RECEIVED				\$32,260,934 <sup>2</sup>	\$10,071,062 <sup>3</sup>	\$6,823,227	\$6,839,139 (incomplete)

<sup>1</sup> The RMIS figures for 2000-2003 include in-house costs, which were historically reported under another grouping in the old systems. In-house costs for 2000-2001 were \$4,253,779 and for 2001-2002 were \$3,283,414.

<sup>2</sup> Recoveries include \$11,534,757 So. Calif. Gas; \$18,000,000 Consolidated Fire District ERAF calculation (which will continue through 2011); condemnation defense cases generated additional recoveries of \$2,476,177; (\$7,750,000 [Allianz]) - not included in the recovery number for FY 2003/2004 - per Instructions from CAO to be credited to FY 2004/2005).

<sup>3</sup> \$1,722,000 recovered from Burlington Northern v. COLA; \$1,000,000 recovered from COLA v. Judicial Council (which will continue annually from 2005 forward); \$7,500,000 recovered from COLA v. Allianz litigation; \$18,000,000 Consolidated Fire District ERAF calculation not included.

**CONFIDENTIAL: ATTORNEY-CLIENT ATTORNEY WORK PRODUCT PRIVILEGED**

**EXHIBIT B  
LEGAL FEES, COSTS, SETTLEMENTS, JUDGMENTS AND RECOVERIES PAID ON LITIGATED CASES\*\*  
FY 2000 - 2006**

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Fees & Costs (RMIS) through 2003-2004; Fees only 2004-2006	\$42,213,781	\$44,815,630	\$51,086,941	\$37,800,450	\$32,373,114	\$22,173,859	
Costs					\$4,827,254	\$3,127,725	
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TOTAL FEES & COSTS CONTRACT LAW FIRMS	\$45,370,412	\$46,071,996	\$51,086,941	\$37,800,450	\$37,200,368	\$25,301,584	
IN-HOUSE FEES				\$9,389,377	\$8,914,448		
IN-HOUSE COSTS					\$1,685,651		
TOTAL FEES & COSTS IN-HOUSE				\$9,389,377	\$10,600,099		
JUDGMENTS, SETTLEMENTS & RECOVERIES						2005-2006 (Through Three Quarters)	2005-2006 (Through Four Quarters)
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RECOVERIES RECEIVED				\$32,260,934 <sup>2</sup>	\$10,071,062 <sup>3</sup>	\$6,823,227	\$6,839,139 (incomplete)

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CONFIDENTIAL: ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED

EXHIBIT B  
LEGAL FEES, COSTS, SETTLEMENTS, JUDGMENTS AND RECOVERIES PAID ON LITIGATED CASES\*\*  
FY 2004 - 2006

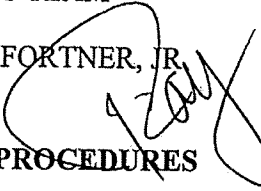
CONTRACT LAW FIRMS	2004 - 2005	2005 - 2006 First Quarter	2005 - 2006 Second Quarter	2005-2006 Third Quarter	2005-2006 Fourth Quarter
Fees & Costs (RMIS) through 2003-2004; Fees only 2004-2006					
Costs	\$32,373,114	\$6,477,446	\$7,791,229	\$7,905,184	
Audited Fees & Costs from County Counsel & TPA Records	\$4,827,254	\$1,057,871	\$1,132,142	\$937,712	
TOTAL FEES & COSTS CONTRACT LAW FIRMS	\$37,200,368	\$7,535,317	\$8,923,371	\$8,842,896	
IN-HOUSE FEES					
IN-HOUSE COSTS	\$8,914,448	\$2,299,298	\$2,259,184		
TOTAL FEES & COSTS IN-HOUSE	\$1,685,651	\$220,001	\$460,171		
	\$10,600,099	\$2,499,299	\$2,719,355		
JUDGMENTS, SETTLEMENTS & RECOVERIES		2005 - 2006 First Quarter	2005 - 2006 Second Quarter	2005-2006 Third Quarter	2005-2006 Fourth Quarter
Judgments & Settlements (RMIS)	\$27,102,278	\$6,547,271	\$6,002,796	\$14,679,895	\$5,639,869 (incomplete)
Audited Judgments and Settlements from County Counsel & TPA Records					
RECOVERIES RECEIVED	\$10,071,062	\$928,110	\$4,056,573	\$1,838,544	\$15,912 (incomplete)

# EXHIBIT B

# MEMORANDUM

March 23, 2006

TO: MANAGEMENT TEAM  
FROM: RAYMOND G. FORTNER, JR.  
County Counsel  
RE: LITIGATION PROCEDURES



This memo is to clarify and memorialize the procedures for handling litigation involving the Board of Supervisors and/or the County, its agencies officers or employees. Effective immediately, the following procedures shall be followed for all litigation we oversee, whether handled in house or assigned to outside counsel.

## Recording of Case Information in RMIS

### Initial Recording:

For each new case a copy of the complaint shall be provided to the Litigation Cost Management Division for the initial entry of data into RMIS. In a case initiated by the County a copy of the complaint must be sent to the Litigation Cost Management Division the same day it is filed with the court. Cases where the County is a defendant are normally served on the Executive Office of the Board of Supervisors, which immediately forwards the summons and complaint to the Litigation Cost Management Division. If the complaint is received by another County Counsel division directly, a copy of the complaint shall immediately be provided to the Litigation Cost Management Division.

Upon receipt of the complaint the Litigation Cost Management Division will consult with the appropriate Assistant County Counsels, as necessary, to determine which division will be responsible for the case, and then immediately enter the following initial information into RMIS:

1. The case caption and the name(s) of all plaintiff(s) and defendant(s);

2. The Assistant County Counsel for the division to which the case is assigned;
3. The date the case was filed and the date of service of the summons;
4. The court and the case number;
5. The opposing attorney's name and address;
6. The case type;
7. The possible funding source;
8. The sub-coverage (general, auto, medical);
9. A brief summary of the allegations; and
10. The RMIS number.

Immediately after entering this data in RMIS, the Litigation Cost Management Division will forward the complaint to the division which will be responsible for the case. The Assistant County Counsel for that division, in consultation with the Senior Assistant if necessary, will decide who will be assigned to handle the case. As soon as that determination is made, the division shall promptly (i.e. no longer than 10 days) provide the following information to the Litigation Cost Management Division for input into RMIS:

1. The name of the in-house attorney assigned to represent the County, or the name of the in-house attorney assigned to supervise the case if it has been assigned to outside counsel or to a Third Party Administrator (TPA); and
2. If the case is assigned to outside counsel or a TPA, the name of the outside law firm or TPA and the name of the individual outside attorney who will represent the County.

Updating RMIS Information:

After the initial entry of data into RMIS, the Assistant County Counsel for the division to which a case is assigned will be responsible for ensuring that data in RMIS is accurate and kept up to date. Administrative Services will assist with this responsibility by regularly providing each in-house attorney and outside counsel handling a case with a pre-filled form showing the information then currently in RMIS regarding that case. The attorney responsible for the case should note any changes (or indicate there are no changes) on this form and return it to Administrative Services. Administrative Services will input the updated information into RMIS.

Indemnity Amount and Reserve for Fees and Costs

The Assistant County Counsel for the division to which a case is assigned will be responsible for establishing and keeping up to date an indemnity amount for the case and the reserve for attorneys fees and costs. This information may be entered into RMIS by the division responsible for the case or will be entered by Administrative Services if requested by the division.

Case Evaluation Plan and Budget

A case evaluation plan (CEP), and a budget, must be completed for every case, whether handled in-house or assigned to outside counsel. Each Assistant County Counsel is responsible for ensuring that a CEP and a budget are completed for each case for which his or her division is responsible.

It is recognized that the CEP will vary from case to case depending upon the nature and magnitude of the issues involved. However, each CEP shall, at a minimum, contain the elements set forth on Attachment 1. The CEP must be completed as soon as possible, but in no event later than 75 days after the case is assigned to the division. The CEP must be maintained in the case file and a copy provided to the Litigation Cost Management Division. If a TPA currently has procedures in place for the development of a CEP in each case, which do not precisely meet these requirements, but which are substantially similar, the TPA may continue to use those procedures.

In developing the case budget, it is understood that your best estimate will have to be used in projecting expenditures. The budget must be completed as

early as possible, and promptly revised when developments in the case dictate a change. The budget is meant to be a benchmark and work expended on the case must constantly be measured against the budget. Any significant increases in the budget should be reviewed by the Assistant County Counsel and the Senior Assistant County Counsel responsible for the division to which the case is assigned, and with the Litigation Cost Manager.

### Roundtables

#### Individual Case Roundtables:

An individual case roundtable must be conducted for any case which qualifies as a "significant case" (see page 7, below), or otherwise has the potential for costs and/or liability to the County exceeding \$100,000, not including any potential payment of plaintiff's attorneys' fees. The initial individual case roundtable will be held no later than six months after the case is served on the County. At this initial roundtable, among other things, you should determine whether it would be beneficial to schedule a subsequent roundtable six months prior to trial. For any case which takes longer than two years to proceed to trial, additional roundtables will be scheduled to ensure that at least one roundtable is conducted each year. In addition, a roundtable should be conducted any time there has been a development in the case which is likely to significantly alter either the County's chance of prevailing or the amount of damages that could be awarded. Finally, for any case set for trial, regardless of whether the case otherwise meets the above criteria, a pretrial roundtable shall be conducted approximately 30 to 60 days prior to trial.

The Litigation Cost Management Division is responsible for scheduling the individual case roundtables for non-TPA cases, and for ensuring that TPA cases are scheduled for roundtables, as set forth above. A representative of the Litigation Cost Management Division will attend individual case roundtables to offer assistance and prompt topics for discussion if necessary. However, each individual case roundtable will be chaired by the Assistant County Counsel (or his or her designee) of the division responsible for the case. The attorney assigned to work on the case (whether in-house or from an outside firm) must attend and actively participate in the roundtable. Representatives of the client department shall be invited to the roundtable and encouraged to attend and to actively participate. The County Risk Manager and the County Counsel Litigation Cost Manager shall be invited to each individual case roundtable.

An individual case roundtable is not intended to be a general overview of the case. Rather, it is intended to be an in-depth, critical examination of the facts, witnesses, documentation, and legal theories of all parties. Counsel will be expected to discuss all issues related to the merits of the case and damages, as well as appropriate strategies for settlement, resolution, or defense/prosecution. The roundtable discussion will also focus on counsel's action plan, fees, costs, and future expenditures. Attachment 2 provides a general list of topics to be covered at an individual case roundtable.

The fact that a roundtable was conducted, as well as any conclusions reached at the roundtable must be recorded and this record must be maintained in the case file. A copy of this record shall also be provided to the Litigation Cost Management Division. The Litigation Cost Management Division will provide forms to be used for this purpose. This information should also be entered into RMIS as case notes. The Litigation Cost Management Division or Administrative Services can enter this data for you if requested, or you may enter it directly. However, any roundtable information entered into RMIS must be consistent with the written roundtable record maintained in the case file.

Quarterly Roundtables:

A roundtable shall be conducted each calendar quarter with each law firm currently handling County cases. Quarterly roundtables will also be conducted by each County Counsel division to review the cases being handled in-house by attorneys in that division.

The primary purpose of the quarterly roundtable is to review the fees and costs to date for each case assigned to the firm or the in-house division and to compare these fees and costs to those budgeted for the litigation. However, the attorney actually handling each case should attend the roundtable and be prepared to discuss all aspects of the case. Thus, the quarterly roundtables will also provide each Assistant County Counsel with an opportunity to regularly review in-house cases which do not meet the criteria for a full series of individual case roundtables, in order to ensure that these cases are being handled with skill and efficiency, and that settlement is being considered when appropriate.

Quarterly roundtables with outside law firms will be scheduled by the Litigation Cost Management Division, which will assign a representative to chair

the roundtable. The Assistant County Counsel for each division responsible for a case assigned to the outside firm will be notified of the quarterly roundtable and shall attend and participate, either personally or through a representative.

The Litigation Cost Management Division, working with the Assistant County Counsel for the division involved, will also be responsible for scheduling quarterly roundtables for in-house cases. However, each in-house case quarterly roundtable will be chaired by the Assistant County Counsel.

If a TPA currently has procedures in place for conducting individual case and/or quarterly roundtables, which do not precisely meet the above requirements, but which are substantially similar, the TPA may continue to use those procedures.

#### **Counsel's Trial Evaluation**

A Counsel's Trial Evaluation (CTE) shall be completed for each case at least 45 days before the date set for trial, or immediately if less than 45 days notice of the trial date is given. The CTE must be completed by the attorney who will try the case. It will be maintained in the case file and a copy provided to the Assistant County Counsel of the division to which the case is assigned and to the Litigation Cost Manager. The topics to be covered in the CTE are listed on Attachment 3. If a TPA currently has procedures in place for the completion of a CTE prior to trial, which do not precisely meet these requirements, but which are substantially the same, the TPA may continue those procedures.

#### **Calendar**

This office has purchased a CompuLaw license. It is anticipated that this system will be implemented in the next few months. Once implemented, this system will be used to record key litigation dates and to produce a litigation calendar for the office, and for individual units. Data in CompuLaw can be downloaded into RMIS, so once this system is up and running there will be no need to enter dates into more than one system.

Until CompuLaw is in place, the Litigation Cost Management Division will maintain a calendar of certain scheduled legal events, including trial dates, mandatory settlement conferences, arbitrations and mediations, motions for summary judgment and individual case roundtables. While the Litigation Cost

Management Division has this responsibility, the attorney responsible for each case (whether in-house or with an outside law firm) must notify the Litigation Cost Management Division within 5 days of receiving notice that any of the above events has been scheduled, continued, trailed, or taken off calendar. This notification may be made by e-mail to [calendar@counsel.co.la.ca.us](mailto:calendar@counsel.co.la.ca.us).

### **Additional Reporting**

#### **Significant Cases:**

In addition to the procedures set forth above, any case which involves a major policy issue for the County, has the potential for resulting in a very large monetary award, is likely to result in the County incurring substantial legal fees and/or costs, or is a case in which the Board of Supervisors has shown a particular interest, is a "significant case" which will warrant enhanced monitoring and reporting. For each such case the Litigation Cost Manager will request a case update each quarter to assist him in completing his quarterly report.

#### **Ad Hoc Reporting:**

Any time there is a significant development in a case of particular importance to the County, you should submit for my consideration a memorandum from me to the Board of Supervisors briefly describing the event and its importance to the case. In any case where the County is presented with a written settlement demand which we will not be recommending for acceptance, if the amount of the demand exceeds \$100,000, you must prepare a memorandum from me to the Board of Supervisors advising of the demand and briefly indicating why we are not recommending a settlement at this amount.

#### **Commencement of Trial and Trial Result Memoranda:**

For all cases, at the commencement of trial you must prepare a memorandum from me to the Board of Supervisors briefly describing the case and indicating that the trial has commenced. Similarly, for all cases, at the conclusion of the trial, you must prepare a memorandum from me to the Board describing the trial result.

All of the above procedures are very important to the effort of this office to meet its regular reporting responsibilities, to effectively manage our litigation, and to better communicate important litigation events to our client, the Board of Supervisors. Your cooperation in fully and timely complying with these procedures is appreciated.

RGF:DMM:REN:SJC

Attachments

## Attachment 1

### Case Evaluation Plans

A Case Evaluation Plan should take into consideration, to the extent possible, the following information:

- a. **Pleadings**: A brief description of the allegations asserted for each cause of action of the complaint.
- b. **Facts/Factual Issues**: An overview of the facts as you know them, and to the extent possible at this early stage, identification of any disputed facts critical to the case. Identify potential witnesses who have factual knowledge and the location of relevant documents needed for an analysis of the case. Also, identify the key witness who will testify to the County's key facts, and evaluate their credibility.
- c. **Legal Analysis**: For each cause of action, set forth the elements of that cause of action, facts supporting that cause of action, how we will defend and counter those facts and/or arguments, any affirmative defenses we have, and an analysis of the viability of the cause of action.
- d. **Proposed Action**: Describe your initial discovery plan and strategy decisions which need to be made now or which you anticipate may need to be made in the future.
- e. **Settlement Prospects/ Alternative Dispute Resolution**: Advise what you believe to be the initial settlement value of this case. Also advise if you believe the utilization of Alternative Dispute Resolution (mediation, arbitration, voluntary settlement conferences, etc.) has a probable chance of resolving this case at an early stage of litigation. If so, what steps are needed in order to set up this case for ADR?
- f. **Attorney Fees Provision**: Is there a contractual right or statutory basis for Plaintiffs to seek recovery of attorney fees? If so, what steps can the County take to minimize the recovery of attorney fees. Is there a contractual right or statutory basis for the County to seek recovery of attorney fees? If so, what steps can the County take to maximize the recovery of attorney fees.

- g. **Cross-Complaint, Subrogation Prospects, Insurance Recoveries or Provision of Defense:** Discuss if there is a potential for recovery from a third party or insurance carrier. Has the case been tendered for a cost of defense to any applicable insurance carrier and/or contractor?
- h. **Case Staffing:** Identify the attorney(s) who will be working on the case and briefly discuss each of their roles. Identify any extraordinary case staffing needs and identify the facts and circumstances which you believe justify such extraordinary staffing.

## **Attachment 2**

### **Roundtable Discussion Topics**

It is recognized that the level of discussion and the topics covered at an individual case roundtable will vary from case to case. Each attorney chairing a roundtable should use his or her professional judgment to determine how to best proceed. However, the following are topics that should generally be covered in individual case roundtables:

#### Initial Roundtable:

- A review of the Case Evaluation Plan and case budget
- Assigned counsel's view as to the County's risk of liability and the facts and law that support this conclusion
- The settlement demand (if any) and whether there is value in making a CCP 998 or Federal Rule 68 offer early in the litigation
- Actions that might be taken to resolve the litigation either through dispositive motion, alternative dispute resolution or settlement
- Strategies to minimize the amount of damages
- Expert witnesses that will need to be retained and why
- In cases with multiple defendants, any potential conflicts of interest
- An evaluation of opposing counsel
- The discovery plan and budget for discovery
- Possible affirmative defenses and immunities that might apply
- Identification of potential witnesses
- How any award of attorneys' fees against the County might be minimized and whether there is any basis for the County to seek an award of attorneys' fees
- Possible risk mitigation and/or loss prevention issues, as well as possible corrective action, for consideration by the client department and/or CAO Risk Management

Subsequent Roundtables:

- An update of the Case Evaluation Plan
- Factual issues to be decided at trial
- Key legal issues in the case
- Settlement prospects and all efforts thus far to resolve the litigation (including any demands received and any offers advanced)
- Whether a CCP 998 or Federal Rule 68 offer is appropriate
- The County's trial strategy and approach
- The identity of and an evaluation of the witnesses for both sides
- The identity of the County representative to sit at counsel table
- Expert witnesses to be called by both sides with a description of their anticipated testimony and an evaluation of their anticipated effectiveness before the trier of fact
- For each cause of action, an evaluation of the County's chances of prevailing and the amount of damages that might be awarded for or against the County
- The budget for the remaining costs and fees to be incurred to take the matter through trial
- A timetable for activity to be completed before trial (i.e. remaining discovery, motion for summary judgment, motions in limine, jury instructions, etc.)
- Proposed jury instructions
- Critical issues that need to be preserved for a possible appeal
- Possible risk mitigation and/or loss prevention issues, as well as possible corrective action, for consideration by the client department and/or CAO Risk Management

### Attachment 3

#### Counsel's Trial Evaluation

The trial evaluation which will be completed by the attorney who will actually try the case should include a discussion of the following topics:

- a. Trial Strategy: Give an overview of the story the County will present to the trier of fact as well as any key legal positions the County will take.
- b. Witnesses: Identify the key witnesses for both sides as well as all expert witnesses. Briefly describe their expected testimony. Identify who will sit at Counsel table as the County representative.
- c. Exposure/Damages Analysis: For each cause of action, provide an evaluation of the County's chances of prevailing and the amount of damages that might be awarded for or against the County.
- d. Settlement Prospects: Discuss settlement prospects. Identify the most recent settlement demand and/or offer made. State whether any CCP 998 or Federal Rule 68 offer or demand has been made or received.
- e. Fees and Costs: Set forth the original estimated budget for the case, as well as any amendments thereto, and the amount of fees and costs incurred to date. Include an estimate of the anticipated fees and costs through trial.
- f. Additional Actions Before Trial: Describe the actions that need to be completed prior to trial (e.g. additional discovery, motions for summary judgment, motions in limine, jury instructions). Give a timetable for completing each action.
- g. Issues to Preserve for Appeal: Identify any critical issues that trial counsel will need to be careful to preserve for any possible appeal.